

MONTANA LEGISLATIVE HISTORY

Chapter 352 19 95

Bill H _____ S 231 Original bill & history ✓ c

H. Committee on Natural Resources

Hearing Date(s) Mar 08 ✓ c

Mar 10 ✓ c

_____ c

_____ c

Date Out Mar 11 ✓ c

S. Committee on Natural Resources

Hearing Date(s) ^oFeb 01 ✓ c

^oFeb 10 ✓ c

_____ c

_____ c

^oFeb 10 ✓ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

4/08	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	6
4/10	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	87	13
4/12	SIGNED BY PRESIDENT		
4/13	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR CHAPTER NUMBER 537 EFFECTIVE DATE: 04/21/95		

SB 230 INTRODUCED BY KLAMPE

ALLOW ALL COUNTIES AND INCORPORATED MUNICIPALITIES TO ADOPT
A RESORT TAX

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/15	TABLED IN COMMITTEE		
2/23	MISSSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 231 INTRODUCED BY MESAROS, ET AL.

REVISE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL
POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT
CONSIDERATIONS AND IMPACTS OF STATE GOVERNMENT ACTIONS

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO NATURAL RESOURCES		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/01	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED	49	0
2/11	2ND READING PASSED		
2/11	REVISED FISCAL NOTE PRINTED		
2/13	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
2/14	FIRST READING		
2/15	REFERRED TO NATURAL RESOURCES		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	78	22
3/28	3RD READING CONCURRED	75	23
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR CHAPTER NUMBER 352 EFFECTIVE DATE: 10/01/95		

SB 232 INTRODUCED BY TOEWS, ET AL.

IMPLEMENT LOCAL CONTROL PROVIDED TO SCHOOL TRUSTEES UNDER
ARTICLE X, SECTION 8, OF THE MONTANA CONSTITUTION BY REVISING
CERTAIN DUTIES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND THE BOARD OF PUBLIC EDUCATION

1/24	INTRODUCED		
------	------------	--	--

SENATE BILL NO. 231

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND

IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND 75-1-201, MCA."

STATEMENT OF INTENT

It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces regulatory restrictions placed on private property.

Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any actions be analyzed to ensure that undue government regulation of private property be evaluated and that alternatives that eliminate regulation of private property be implemented when practicable.

It is not the intent of the legislature to diminish or affect in any manner a property owner's rights under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of eminent domain in any manner.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-1-102, MCA, is amended to read:

"75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy ~~which~~ that will encourage productive and enjoyable harmony between ~~man~~ humans and ~~his~~ their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts ~~which~~ that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of ~~man~~ humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

Section 2. Section 75-1-103, MCA, is amended to read:

"75-1-103. Policy. (1) The legislature, recognizing the profound impact of ~~man's~~ human activity

1 on the interrelations of all components of the natural environment, particularly the profound influences of
2 population growth, high-density urbanization, industrial expansion, resource exploitation, and new and
3 expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and
4 maintaining environmental quality to the overall welfare and human development, ~~of man and further~~
5 recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private
6 property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal
7 government, ~~and~~ local governments, and other concerned public and private organizations, to use all
8 practicable means and measures, including financial and technical assistance, in a manner calculated to
9 foster and promote the general welfare, to create and maintain conditions under which ~~man~~ humans and
10 nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of
11 undue government regulation, and to fulfill the social, economic, and other requirements of present and
12 future generations of Montanans.

13 (2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility
14 of the state of Montana to use all practicable means consistent with other essential considerations of state
15 policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ so that the
16 state may:

17 (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding
18 generations;

19 (b) ~~assure~~ ensure for all Montanans safe, healthful, productive, and aesthetically and culturally
20 pleasing surroundings;

21 (c) attain the widest range of beneficial uses of the environment without degradation, risk to health
22 or safety, or other undesirable and unintended consequences;

23 (d) protect the right to use and enjoy private property free of undue government regulation;

24 ~~(d)~~ (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain,
25 wherever possible, an environment ~~which~~ that supports diversity and variety of individual choice;

26 ~~(e)~~ (f) achieve a balance between population and resource use ~~which~~ that will permit high standards
27 of living and a wide sharing of life's amenities; and

28 ~~(f)~~ (g) enhance the quality of renewable resources and approach the maximum attainable recycling
29 of depletable resources.

30 (3) The legislature recognizes that each person ~~shall be~~ is entitled to a healthful environment, that

each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which that~~ will insure ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which that~~ may have an impact on ~~man's~~ the environment;

(ii) identify and develop methods and procedures ~~which that~~ will insure ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property;

~~(iii)~~ (iv) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which that~~ cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including:

(I) whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been implemented; and

(II) whether state government may be liable for compensation to a private property owner for regulatory takings of private property as required by the 5th and 14th amendments to the U.S. constitution

1 or Article II, section 29, of the Montana constitution:

2 ~~(D)~~(E) the relationship between local short-term uses of ~~man's~~ the environment and the
3 maintenance and enhancement of long-term productivity; and

4 ~~(E)~~(F) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved
5 in the proposed action should it be implemented;

6 ~~(iv)~~(v) study, develop, and describe appropriate alternatives to recommend courses of action in any
7 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

8 ~~(v)~~(vi) recognize the national and long-range character of environmental problems and, ~~where~~ when
9 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
10 designed to maximize national cooperation in anticipating and preventing a decline in the quality of
11 ~~man's~~ the world environment;

12 ~~(vi)~~(vii) make available to counties, municipalities, institutions, and individuals advice and
13 information useful in restoring, maintaining, and enhancing the quality of the environment;

14 ~~(vii)~~(viii) initiate and ~~utilize~~ use ecological information in the planning and development of
15 resource-oriented projects; and

16 ~~(viii)~~(ix) assist the environmental quality council established by 5-16-101; and

17 (c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~(iv), the responsible
18 state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction
19 by law or special expertise with respect to any environmental impact involved. The responsible state official
20 shall also consult with and obtain comments from any state agency with respect to any regulation of private
21 property involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state,
22 federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~
23 must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must
24 accompany the proposal through the existing agency review processes.

25 (2) The department of public service regulation, in the exercise of its regulatory authority over rates
26 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1
27 through 3.

28 ~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement,~~
29 ~~but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major~~
30 ~~action of state government as that term is used in subsection (1)(b)(iii).~~

1 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~
2 ~~1989, that must include but not be limited to:~~

3 ~~(i) such environmental impacts as may be found to be associated with the drilling for and~~
4 ~~production of oil and gas in the major producing basins and ecosystems in Montana;~~

5 ~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be~~
6 ~~necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the~~
7 ~~environment and renewable resources of the ecosystem may be returned to either conditions similar to~~
8 ~~those existing before drilling or production occurs or conditions that reflect a natural progression of~~
9 ~~environmental change;~~

10 ~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such~~
11 ~~environmental impacts of individual drilling proposals as may be found to exist;~~

12 ~~(iv) an appropriate method for incorporating such environmental review as may be found to be~~
13 ~~necessary into the board's rules and drill permitting process and for accomplishing the review in an~~
14 ~~expedient manner;~~

15 ~~(v) the maximum time periods that will be required to complete the drill permitting process,~~
16 ~~including any environmental review; and~~

17 ~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in~~
18 ~~responding to public and private concerns about drilling and production.~~

19 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~
20 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~
21 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~
22 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~
23 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~
24 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~
25 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~
26 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

27 ~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas~~
28 ~~conservation shall prepare a written progress report after each regular meeting of the board and after any~~
29 ~~special board meeting that addresses the adoption or implementation of the programmatic environmental~~
30 ~~statement. A copy of each report must be sent to the environmental quality council."~~

1
2
3
4
5
6
7

NEW SECTION. Section 4. Private property protection -- ongoing programs of state government.
Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S.
or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing
programs of state government pending the completion of any statements that may be required by [sections
1 through 3].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0231, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the purpose and policy of the Montana Environmental Policy Act to include private property right considerations and impacts of state government actions.

ASSUMPTIONS:

Department of Natural Resources and Conservation (DNRC):

1. When a fee is collected from an applicant to compile an environmental impact statement, it will be necessary for DNRC to collect a higher fee to take under consideration the additional provisions in the proposed legislation. The fiscal impact is to the applicant in the fee collected to prepare the environmental impact statement and to monitor the project. There is no fiscal impact to DNRC.
2. If the applicant receives a permit from DNRC and the project creates a problem for a neighboring landowner, the state could be liable if the agency neglected to address the issue in the permitting process. There is no way to quantify this scenario.
3. When the applicant and DNRC share the cost of compiling an environmental impact statement, both will share in the increased cost to take under consideration the additional provisions in the proposed legislation.
4. DNRC collects a fee that is sufficient to cover the costs of compiling an environmental impact statement or assessment and to monitor the project. Therefore, there is no net fiscal impact to the department because of the proposed legislation

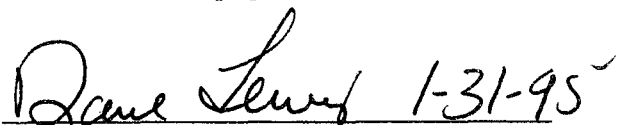
Environmental Quality Council (EQC):

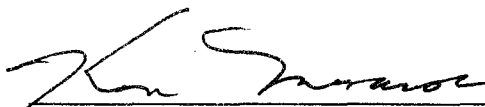
5. EQC is the agency established in statute to ensure that the policies embodied in MEPA are carried out by the executive branch.
6. EQC has assigned 1.00 FTE as the agency MEPA coordinator and has prioritized the training of state agencies in proper implementation of MEPA. In the past two years, EQC has trained over 550 state employees, developed a handbook for agency personnel, and conducted two continuing legal education programs for agency and private attorneys.
7. If this legislation is approved, MEPA model rules would have to be revised.
8. EQC will continue to prioritize MEPA implementation and training, make necessary modifications to its training program and handbook, and spend additional time with state agencies assisting them with the interpretation of the legislation requirements.
9. EQC's budget as proposed for FY96 and FY97 is sufficient to absorb any additional associated with the implementation of this legislation.

Department of Health and Environmental Sciences (DHES):

10. DHES would be required to identify and develop procedures to ensure that governmental actions are evaluated for regulatory restrictions on private property.
11. DHES will be proactive by revising and developing procedures and policies which consider the impact of department actions on private property rights.
12. Responsibilities under this bill will exceed the scope of an environmental impact statement and funds would be required to contract for professional services to interpret the law and analyze lawful and implementable alternatives to regulatory impacts

(continued on page 2)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


KEN MESAROS, PRIMARY SPONSOR DATE

Fiscal Note for SB0231, as introduced

SB 231-

FISCAL IMPACT:

Department of Health and Environmental Sciences:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	92,099	87,982
<u>Funding:</u>		
General Fund	92,099	87,982

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0231, as amended

DESCRIPTION OF PROPOSED LEGISLATION:

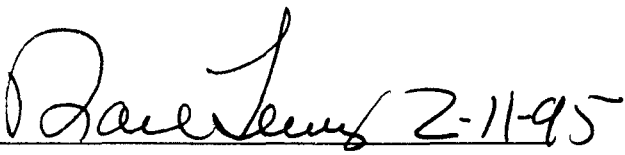
An act revising the purpose and policy of the Montana Environmental Policy Act to include private property right considerations and impacts of state government actions.

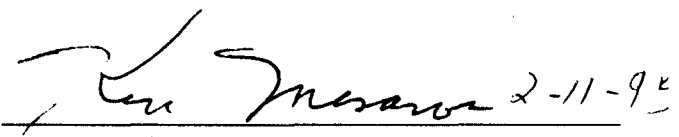
ASSUMPTIONS:

1. The legislation as amended will have minimal fiscal impact to affected state agencies.

FISCAL IMPACT:

None.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


KEN MESAROS, PRIMARY SPONSOR DATE

Fiscal Note for SB0231, as amended

SB 231-#2

SENATE NATURAL RESOURCES

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0199	FOSTER, MIKE		REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS			
	1/19	1/30		TABLED ON 02/13	VOTE:	
SB0204	GROSFIELD, LORENTS		PUBLIC WATER SUPPLY ACT ENFORCEMENT REVISIONS			
	1/20	1/25		PASS AS AMENDED	VOTE:	2/02
SB0225	TOEWS, DARYL		REQUIRE SALE OF SOME STATE LANDS IN DANIELS/VALLEY/GARFIELD/PHILLIPS COUNTY			
	1/23	2/06		PASS AS AMENDED	VOTE:	2/16
SB0231	MESAROS, KEN		PRIVATE PROPERTY RIGHT CONSIDERATIONS UNDER MEPA			
	1/24	2/01		PASS AS AMENDED	VOTE:	2/10
SB0234	GROSFIELD, LORENTS		REVISE STATE ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES AND FUNCTIONS			
	1/24	2/03		PASS AS AMENDED	VOTE:	2/16
SB0247	COLE, MACK		INDUSTRIAL WASTE DISCHARGE LIMITATIONS -- RULE AMENDMENT			
	1/25	2/01		TABLED ON 02/20	VOTE:	
SB0252	TVEIT, LARRY		CLARIFY WATER QUALITY LAWS			
	1/26	2/08		PASS AS AMENDED	VOTE:	2/20
SB0267	FORRESTER, GARY		REQUIRE POSTING OF STATE RECREATIONAL LANDS CONTINGENT ON USE FEE INCREASE			
	1/28				VOTE: FISH & GAME	
SB0288	KEATING, TOM		REVISE THE MONTANA ENVIRONMENTAL POLICY ACT			
	2/01	2/08		PASS AS AMENDED	VOTE:	2/11
SB0330	SWYSGOOD, CHUCK		WATER QUALITY NONDEGRADATION REVISIONS			
	2/08	2/13		PASS AS AMENDED	VOTE:	2/20
SB0331	BECK, TOM		GENERALLY REVISE THE MONTANA WATER QUALITY ACT			
	2/08	2/13		PASS AS AMENDED	VOTE:	2/20
SB0344	TVEIT, LARRY		PROVIDE INCENTIVES FOR ENERGY RECOVERY OF HAZARDOUS WASTES			
	2/09	2/15		TABLED ON 02/20	VOTE:	

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 1,
1995, at 1:00 pm

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Larry Tveit

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 231, SB 247
Executive Action: SB 186

*{Tape: 1; Side: A; Comments: could not hear testimony or tapes clearly because
of microphone feedback noise and echo in Room 325.}*

HEARING ON SB 247

Opening Statement by Sponsor:

SEN. MACK COLE, SENATE DISTRICT 4, said SB 247 will assist in the
clarification of surface water standards. The bill also
eliminates the repetition between some of the administration rule

Closing by Sponsor:

SEN. COLE said there had been a good discussion on SB 247 and had nothing further to add.

HEARING ON SB 231Opening Statement by Sponsor:

SEN. KEN MESAROS, SD 25, Great Falls, said the intent of SB 231 would serve as a directive to state agencies to implement government actions that reduce regulatory restrictions on private property. He said whenever Montana Environmental Policy Act analysis is required, legislative actions should be analyzed to ensure that undue government regulation of private property be evaluated, and alternatives to eliminate regulatory restrictions of private property be implemented when practicable.

SEN. MESAROS said that SB 231 established that when MEPA analysis is conducted that may impact the human environment, the state agencies will also evaluate any regulatory restrictions upon private property. Should regulatory impacts occur on private property, alternatives should be considered that would reduce, minimize or eliminate actions that could result in any "takings" of private property under the U. S. Constitution or the Montana Constitution. SB 231 establishes that when MEPA analysis is to be conducted an analysis regarding regulating the use of private property is also to be conducted. He said the fiscal impact on SB 231 would be minimal.

Proponents' Testimony:

John Bloomquist representing the Montana Stockgrowers Association, said SB 231 uses the existing MEPA process for the property rights analysis that would not now occur on all state government actions even though MEPA analysis might be triggered. An analysis would be essential when regulatory restrictions are placed upon private property rights .

{Tape: 2; Side A}

Lorna Franks, representing the Montana Farm Bureau, said they believe that property rights are among the human rights essential for the preservation of individual freedom. She said federal agencies need to review their actions toward private property, and should be required to have alternative plans to minimize the "takings." She asked the committee members to give SB 231 a do pass recommendation.

Maureen Schwinden representing Women Involved in Farm Economics, said their policy states two things: 1. protect private property rights and 2. protect the land, air, and water in Montana. She

hoped the committee would find a way to solve the problem for those who make their living off the land. She said their organization would like to see a holistic approach in consideration of the impact on landowners.

Bob Stephens, representing the Montana Grain Growers Association, said they support SB 231.

Candace Torgerson, representing the Montana Cattlewomen's Association said they supported SB 231.

Larry Brown, representing the Agricultural Preservation Association, said under MEPA there is a continuous effort to reinvent and eliminate redundancy by identifying the root of actions. He said SB 231 gives an opportunity to solve problems.

Mike Murphy, Executive Director, Montana Water Resources Association, said SB 231 represents common sense. He said the bill is consistent with state and federal regulations and they support SB 231.

Bud Clinch, Commissioner, Montana Department of State Lands, said he appeared before the committee on behalf of the Governor's office. The administration fully recognizes the necessity to protect the value of private property rights and prevent "takings" determinations. They support SB 231 hinged upon the sponsor's intent that the bill will have minimal fiscal impact on the affected state departments.

Riley Johnson, representing the National Federation of Independent Business, Montana chapter, said nearly 2,000 members in Montana are agricultural based families and small businesses. He said that small businesses are being considered under SB 231.

David Owen, representing the Montana Chamber of Commerce, said they support SB 231, but the word "pollution" needs to be changed to a more comprehensive definition.

Peggy Trenk, representing Western Environmental Trade Association, said they support SB 231.

Tammy Johnson, representing Citizens United for a Realistic Environment, said they support SB 231, because private property rights are very dear to their members. Those people are spending between 38% and 52% on mortgage payments to realize the American dream of owning property.

Opponents' Testimony:

Ted Lange, representing the Northern Plains Resource Council, said they were opposed to SB 231 because of the costs that may be imposed on state government and because they don't believe it fits the intent of MEPA. EXHIBIT 3.

Mr. Lange submitted amendments addressing the statements of intent as contained in EXHIBIT 3a.

Debby Smith, representing the Sierra Club, said they oppose SB 231. She said they believe SB 231 is based upon two flawed notions: 1. the regulation of private property is bad, and 2. regulation of private property frequently involves "taking." She said the state agency should step in and make sure that it is not affecting a "taking." There were bills heard in the House that dealt with "takings," and both of the bills would require state agencies to consider whether or not anything they do will affect a "taking." "Taking" happens in only the most extreme circumstances when someone's property value is impacted. It may be beneficial to the committee to find out how much money has been paid out in "takings" litigation. The 1100 members of the Montana Sierra Club, most of which are private property owners, want property values to be protected. She said they believe that the agricultural community benefits by regulations that prohibit the sitings of waste dumps and regulations that provide clean water. These benefit everyone. SB 231 shouldn't involve MEPA, because the purpose of MEPA is to make sure that agencies consider the effects on the public environment that people don't necessarily own such as air, water, and public land. When private property is impacted by state regulations, people can already have a very strong voice in saying their property is being affected. Her organization doesn't believe MEPA should be involved with private property analysis and therefore, encourages that SB 231 be tabled.

Janet Ellis, representing the Montana Audubon Society, said they oppose SB 231, especially because of the statement of intent that says, "It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces regulatory restrictions placed on private property." Regulations are not all bad; there are regulations that protect the air, water, etc. Property owners are protected by zoning laws. She said they would like to work with the sponsor to see if he would be willing to change some sections of the bill.

Jim Jensen, Executive Director, Montana Environmental Information Center, said environmental laws protect people's private property. You cannot sell property that has polluted air and ground water. He said he could not see how SB 231 would work, because MEPA is not meant to do what the amendments address. As an example, the mine proposal on the Black Foot River, where an environmental impact statement will be done, is more than the company wishes to pay so the department will use the analysis that has been paid for by the company. He said the fiscal note is substantially flawed on SB 231, because it does not acknowledge the mining industry. The Montana Constitution says that all land disturbed by mining shall be reclaimed. The application of SB 231 will make it very expensive for agencies and the public to understand just what is reasonably required of

a developer. Also, state lawyers will be conducting an alternative in the EIS process in identifying potential private property impacts.

{Tape: 2; Side: B}

Mr. Jensen pointed out that the rules which all state agencies have adopted to implement MEPA, already have requirements. He said Section 2, Subsection D, of the rules says: "the agency is required to consider the alternatives that are realistic, technology available and that represent a course of action that..."

Questions From Committee Members and Responses:

SEN. WELDON said one of the state actions that cause a MEPA review is permitting. He asked SEN. MESAROS if in the process of MEPA, would the appropriate agency have to examine the possible effect of the permit on all water rights and drainages. SEN. MESAROS said SB 231 is not the kind of legislation that would go into in-depth analysis of impacts on adjoining properties.

SEN. WELDON said adjoining property would have to be taken into consideration. SEN. MESAROS said according to testimony that has been heard, a lot more is anticipated by some of the witnesses than what the bill actually does.

SEN. WELDON said there are other agencies who's actions trigger a MEPA review such as Fish, Wildlife and Parks, Department of State Lands, Livestock, Agriculture, and the Board of Investments. He asked SEN. MESAROS how the bill would affect some of those agencies. SEN. MESAROS said those agencies were contacted as to the fiscal impact, and they did not respond. He said he received the fiscal note from DNRC, EQC, and DHES. DHES came out with a significant fiscal impact, which he questions. He agreed that the fiscal note is substantial and cannot see how SB 231 would carry such a fiscal note by taking an existing program and adding one additional step to it.

SEN. WELDON suggested that the committee ask DHES to provide some information because of the significant impact of the fiscal note. A key challenge for MEPA effectiveness is evident in the fiscal note. He said in the proposed reorganization of the Legislative Branch it is suggested that EQC be reduced to 2 FTE. SEN. WELDON asked If that were to occur, what would the success of the intent of SB 231 be. SEN. MESAROS said he was not aware of the proposed legislation, but could not see where SB 231 places any significant burden on any agency.

SEN. FOSTER asked Katherine Orr, Chief Legal Counsel, Department of Health and Environmental Sciences, why DNRC and EQC had no significant impact in the fiscal note on SB 231, but DHES has that additional cost. Ms. Orr replied that the language of the bill does not clearly specify that the only action required by an

agency is with respect to an EIS. She said to assess "takings" would affect more than Environment Impact Statements.

SEN. FOSTER asked Ms. Orr to address contracted services. Ms. Orr said contracted services would be an alternative because they wouldn't have the staff to do extensive takings analyses.

SEN. BROOKE asked Mr. Clinch if he could respond as to the fiscal impact in Department of State Lands.

Mr. Clinch responded that the Department of State Lands did not receive a request for a fiscal note. He said some preliminary evaluation was done anyway to determine what impact SB 231 would have on DSL. In visiting with SEN. MESAROS it was decided the impact on DSL would be minimal.

SEN. BROOKE asked Mr. Clinch if MEPA would be triggered in regard to a sale in a particular area. Mr. Clinch said their legal staff interpreted the bill as not having any impact on State Lands, but only on regulatory actions that are taken with respect to adjacent private lands.

SEN. BROOKE asked Mr. Clinch if he thought the bill was open to broader interpretation. She said there should be some consideration for the downstream water owners. Mr. Clinch said, he could only relate to the fact that upon receiving SB 231, it was turned over to John North, Chief Legal Counsel to evaluate the impact.

SEN. CRISMORE said to Ms. Smith that she talked about "taking" of private property. As an example, he said he had 240 acres of timber with a stream running through it, however, it doesn't run all year. He said he bought the land for the timber, and by leaving 50 feet on each side of the stream, leaves only 50% of the timber to be harvested. He asked Ms. Smith if the 50% left on each side of the stream was considered a "taking" by law. Ms. Smith said that was a question that is in litigation and is coming up before the Supreme Court. She said in her opinion under current law, that situation would not be considered a "taking." The reason is that the Supreme Court requires a valuation of all the land, and even though in SEN. CRISMORE'S case he would only have 50% of the land, that would not be considered a "taking." She said however that she thought that the law could be stretched, so that it could be considered a "taking."

SEN. CRISMORE asked Ms. Smith if she could foresee that once that timber no longer existed, would it then be considered a "taking." Ms. Smith said she couldn't say whether or not it would be. It will be the subject that will be discussed in the Supreme Court. Under SB 231 if no action on that land was taken by state agencies, she did not believe the court could come up with a conclusion that a "taking" would occur.

SEN. CHRISTIANS said in Long Range Building they talked about feed lots built on creek beds and debris going down stream. He asked if the state was liable because of the quality of the water.

Debbie Schmidt, Executive Director, Environmental Quality Council, said it may be beneficial to confer with the MEPA legal staff and contact some of the members of DNRC.

SEN. WELDON said it appears the Department of Health is operating on the assumption that if an applicant receives a permit and it creates a problem for a neighboring land owner, the state could be liable for damages.

SEN. MESAROS said they are looking beyond SB 231 for those additional property values. That is their interpretation and it does not exist in SB 231.

SEN. BROOKE asked SEN. MESAROS if he could explain how REP. GRINDE'S bill and SB 231 coordinate.

{Tape: 3; Side: A}

SEN. MESAROS said he could not speak to REP. GRINDE'S bill.

CHAIRMAN GROSFIELD questioned Ms. Smith, about "takings," the Supreme Court and the Fifth Amendment that talks about due process, etc. He said that he understood that when the Montana Constitution was redone, the people involved with the constitutional convention had a different approach. The Montana Constitution says, "not to be taken or damaged." He asked her to respond to that. Ms. Smith said, she agreed that the word "damaged" could be interpreted differently. She said to her knowledge, that issue had not been litigated. She agreed that the Montana Constitution may be more stringent in determining devaluation than just defining "taking."

CHAIRMAN GROSFIELD said Page 1, Line 13 or 14 of SB 231 says, "...actions be analyzed to ensure that undue government regulation of private property be evaluated and that alternatives that eliminate regulation of private property be implemented when practicable."

Mr. Bloomquist said SB 231 is focusing on the regulatory aspects of state government action. There are regulatory results that do benefit property owners, and there are regulatory actions that restrict and limit the use of private property, and the latter is what SB 231 is focused on.

Closing by Sponsor:

SEN. MESAROS said it was a good hearing and he thanked everyone who testified on SB 231. He said he presented SB 231 to have a balanced approach in the existing program. He said he was

sensitive to the cost of the implementation of state programs. He said he believed that with further consideration, the fiscal impact of SB 231 would be minimal. He said almost 100 bills dealing with this subject are currently being proposed in 36 states. A quote from Theodore Roosevelt says, "In every civilized society property rights must be carefully safeguarded; ordinarily and in the great majority of cases, human rights and property rights are fundamentally and in the long run, identical." EXHIBIT 4.

EXECUTIVE ACTION ON SB 186

Mr. Clinch said they had no opposition to SB 186. Mr. Crowley and Mr. Langley also supported SB 186.

Motion: SEN. CRISMORE MOVED SB 186 DO PASS.

Discussion: SEN. WELDON asked Mr. Clinch if SB 186 included some federally funded sites. Mr. Clinch answered that by law, the funds are not allowed to be spent on super fund sites.

Vote: MOTION TO DO PASS SB 186, CARRIED UNANIMOUSLY.

ROLL CALL

DATE _____

2-1-95

SEN

3

Northern Plains Resource Council

SENATE NATURAL RESOURCES
COMMITTEE NO. 3
DATE 2-1-95
BILL NO. SB 231

Testimony on SB231 Senate Natural Resources Committee February 1, 1995

Mr. Chairman and members of the committee, my name is Ted Lange, and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to SB231 because of the costs it may impose on state government and because, as this bill is currently drafted, we do not believe that it fits into the spirit and intent of MEPA.

MEPA was enacted in the spirit of fairness and balance. Its intent was that all the impacts of government actions should be carefully weighed before an action was taken. It was meant to ensure that the public good was balanced against private gain, and that environmental impacts that had been previously neglected would now be considered.

If this legislature decides it is appropriate to include specific private property considerations alongside MEPA's environmental provisions, we believe the language must be carefully worded so that no private property impacts are neglected.

There are government actions that **protect** private property. There are actions that **restrict** the use of private property. And there are also actions that actually **enhance** property values. Government can adversely impact private property not only by regulating it, but by failing to regulate one party's use of their property if their actions are likely to impact the property of others.

We believe private property rights come with responsibilities, and an essential role of government regulation is to guard against instances when property owners use their property in irresponsible and destructive ways.

We do not believe that the current language in SB231 adequately provides for balanced consideration of all the positive and negative property impacts of government actions. We believe that the statement of intent is flawed, as are the provisions concerning regulatory impacts, property rights and alternatives, on page 3, line 18 and lines 26 through 28. These provisions appear to address **only** the impacts on those being regulated, neglecting those property owners who may be benefitted or protected by those same regulations. It is also strange that the alternatives provision is worded in the past tense when the intent of MEPA is to address future proposed actions.

We believe this bill will only be balanced if it requires consideration of **all** private property impacts of government actions; not just **regulatory** impacts; not just

Northern Plains Resource Council

Suggested Amendments to SB231 Senate Natural Resources Committee

February 1, 1995

Statement of Intent, Page 1

1. Line 11
Following: "reduces"
Strike: "regulatory restrictions placed"
Insert: "impacts"
2. Line 13
Following: "government"
Strike: "regulation of"
Insert: "impacts on"
3. Line 14
Following: "that"
Strike: "eliminate regulation of"
Insert: "minimize impacts on"
4. Line 14
Following: "property"
Insert: "while protecting the public's right to a clean and healthful environment"

NATURAL RESOURCES
NO. 317
DATE 2-1-95
BILL NO. SB 231

The Statement of Intent would now read:

It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces impacts on private property. Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any actions be analyzed to ensure that undue government impacts on private property be evaluated and that alternatives that minimize impacts on private property, while protecting the public's right to a clean and healthful environment be implemented when practicable.

1/31/95 16:42

Post-It™ brand fax transmittal memo 7671

of pages 2

To	From <u>George Darrow</u>
Co. <u>SEW GROSFIELD</u>	Co.
Dept.	Phone # <u>837-4400</u>
Fax # <u>406-444-3971</u>	Fax # <u>406-837-1166</u>

George Darrow

SENATE NATURAL RESOURCES

EXHIBIT NO. 4 Paladin Farms
 DATE 2-1-95 Box 400
 BILL NO. SB-231 Bigfork, MT 59911
 406-837-4400

January 31, 1995

RE: S.B. 231

Senator Lorents Grosfield, Chairman
 and Members of the Senate Natural Resources Committee
 Montana Legislature
 Capitol Station
 Helena, MT 59620

Dear Senator Grosfield:

I am submitting herewith my testimony on S.B. 231. As a legislative courtesy to a former Montana State Senator (Republican from Yellowstone County) and the chief sponsor of the Montana Environmental Policy Act, enacted in 1971, I would appreciate it if you would read this testimony to the committee at the hearing on S.B. 231 and have it entered into the record. Thank you.

Section 3 of the Montana Constitution sets forth the Inalienable Rights of all Montanans. Among the rights that are enumerated therein is the right to a "clean and healthful environment" and the rights of "acquiring, possessing and protecting property." The Section closes by stating that, "In enjoying these rights all persons recognize corresponding responsibilities."

For nearly a quarter of a century the Montana Environmental Policy Act has been the primary means of implementing the Constitutional rights set forth above. It has functioned in an exemplary manner to protect the "use and enjoyment" of private property "without undue government regulation."

MEPA embodies no regulatory authority and does not provide for any penalties. Montana is the only state in the U.S. with an environmental policy act administered as an arm of the Legislature. In other states and for the federal government, environmental policy is administered by large and costly bureaucracies in the executive branch that do operate with abundant regulations.

In essence, MEPA simply requires state agencies to "look before they leap" and "think before they act." It outlines a process for the thoughtful consideration of all impacts and consequences of "significant" state agency projects and proposals. It requires that agencies publicly identify these impacts "along with economic and technical considerations" so as to avoid the otherwise unintended, unforeseen and unwanted consequences of their proposed action.

It is no accident that Montanans enjoy a "clean and healthful environment" of great beauty to a much greater degree than residents of similarly situated nearby states. It is no accident that Montana ranchers and farmers and other private property owners have benefited from the accrual of hundreds of millions of dollars in increased property values, all Montana citizens have shared in improved state prosperity and enhanced state revenues relative to other regions subject to accelerated degradation.

EXHIBIT NO. 24DATE 2-1-95BILL NO. S B-231

This has been accomplished by the quiet, efficient, almost unnoticed *legislative oversight* of MEPA. With this oversight delegated to the tiny, but dedicated and capable staff of the EQC, Environmental Impact Statements have minimized the irreparable damage to Montana resources and property, both public and private, that might otherwise have resulted from sometimes ill-conceived, misguided, cockamamie proposals. For nearly 25 years, and to Montana's great benefit, MEPA has successfully and at nominal expense, provided an effective process that has "minimized the regulation of private property rights."

I believe that the well-intentioned amendments proposed in S.B. 231 will have an effect opposite to that apparently intended. The modifications proposed will make the administration of a revised MEPA more awkward, more cumbersome, more costly and less effective in protecting private property rights.

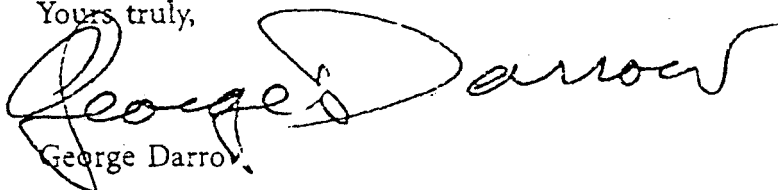
They will disrupt a legislative process that has a proven track record of protecting and enhancing those rights and increasing property values and economic investment in Montana. Since 1971, MEPA has been an important safeguard in assisting generations of Montanans in the care that they have devoted to the land they own and love. Public and private prosperity does not derive from irresponsibly degraded, trashed out, polluted and blighted properties.

I understand the present mood of the Legislature that embraces any legislation purporting to minimize regulation and strengthen private property rights. At the same time, it is my belief that the record abundantly demonstrates that over the last quarter of a century, these goals have been and are now being effectively implemented by MEPA in its present form. I believe that S.B. 231 will impede and disrupt rather than strengthen that effort.

Please make this testimony available to others in the Legislature and to interested parties.

Thank you for your consideration.

Yours truly,



George Darro

cc: Governor Marc Racicot
(ex-officio and non-voting member of the EQC)
Director EQC
Senate Leadership

2-1 DATE 2-1-95BILL NO. SB-231

"In every civilized society property rights must be carefully safeguarded; ordinarily and in the great majority of cases, human rights and property rights are fundamentally and in the long run, identical."

Theodore Roosevelt, 1910

EXECUTIVE SUMMARY ON STATE PRIVATE PROPERTY RIGHTS
LEGISLATION DURING THE 1993-94 LEGISLATIVE SESSIONS
(April 21, 1994)

- Almost 100 bills are currently under proposal in 36 states.
- Eight bills have been signed into law.

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 2-1-95

BILL NO. SB 231

STATES WITH ENACTED PRIVATE PROPERTY RIGHTS LAW¹

Arizona² (1992)
Delaware (1992)
Indiana³ (1993)
Mississippi⁴ (1994)
Utah⁵ (1993, 1994)
Virginia⁶ (1993)
Washington⁷ (1991)

STATES IN WHICH LEGISLATION HAS BEEN INTRODUCED⁸

Alabama	Kentucky	Pennsylvania
Arizona	Louisiana	Rhode Island
California	Massachusetts	South Carolina
Colorado	Minnesota	South Dakota
Connecticut	Missouri	Tennessee
Delaware	Montana	Texas
Florida	Nebraska	Vermont
Georgia	New Hampshire	Virginia
Hawaii	New York	Washington
Idaho	North Carolina	West Virginia
Iowa	Oklahoma	Wisconsin
Kansas	Oregon	Wyoming

STATES WHERE CURRENT LEGISLATION HAS PASSED ONE HOUSE

California	Kansas	Montana	Rhode Island
Delaware	Louisiana	Oklahoma	Texas
Idaho	Missouri	Oregon	

¹These laws, except for the Mississippi law, are all planning laws. Italic type indicates that new legislation is currently under consideration to supplement existing private property rights law.

²Opposition circulated and successfully gathered signatures for a referendum to repeal the law. A vote will occur in the 1994 General Election in November. The law does not go into effect unless it is approved in the referendum.

³Property rights legislation was part of the 1993 Administrative Rules Oversight Act.

⁴Compensation act that applies only to private forest land.

⁵The 1993 act applies to state agencies. The 1994 act applies to local governments.

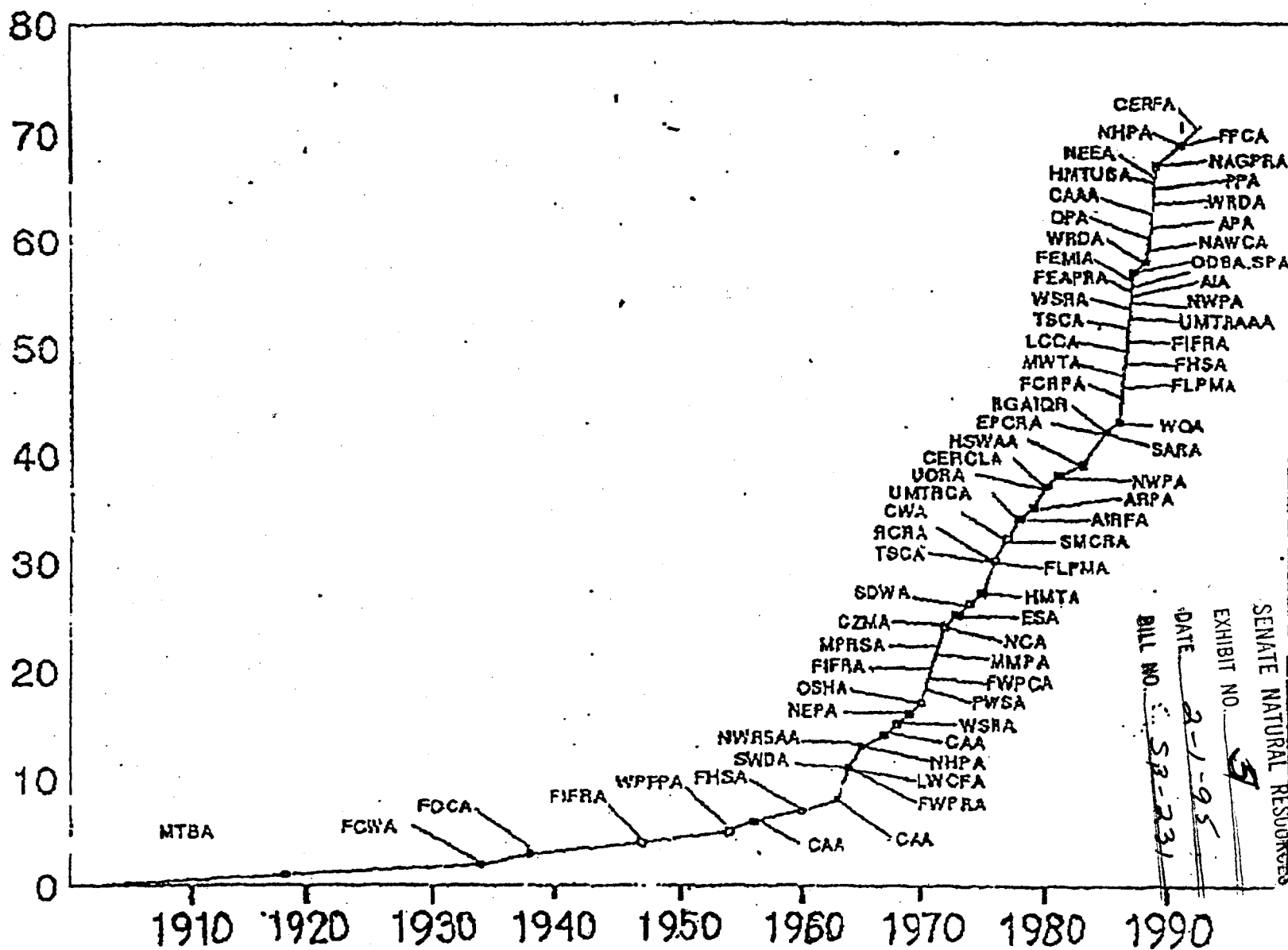
⁶Study bill—A joint subcommittee was established to study state governmental actions which may result in a taking of private property and to see if changes in current laws are needed.

⁷Property rights legislation was added as an amendment to the 1991 Growth Amendment Act.

⁸Regular type signifies where planning bills have been introduced. Bold type indicates where compensation legislation has been introduced. Both planning and compensation legislation have been introduced in California, Massachusetts, New Hampshire, Oregon, Rhode Island, and Washington.

FEDERAL ENVIRONMENTAL LEGISLATION

CUMULATIVE NUMBER OF LAWS AND AMENDMENTS



SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 2-1-95
BILL NO. SB-231

DATE 2-1-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 231 ^{SP} +247

Name	Representing	Bill No.	Check One	
			Support	Oppose
<u>Don Olsen</u>	<u>Mont. Wood Products Assoc</u>	<u>231</u>	☒	☐
<u>Peggy Olson-Trenw</u>	<u>WETA</u>	<u>231</u>	☒	☐
<u>MIKE MURPHY</u>	<u>MT. WATER RES ASSN</u>	<u>231</u>	☒	☐
<u>John Blumquist</u>	<u>MT. Steck-grass</u>	<u>231</u>	☒	☐
<u>Carolan Torrance</u>	<u>MT Cattlemen Assn</u>	<u>231</u>	☐	☒
<u>Larry Brown</u>	<u>Ag. Pres. Assoc.</u>	<u>231</u>	☐	☒
<u>Dorothy Smith</u>	<u>Sierra Club</u>	<u>231</u>	☐	☒
<u>Alan Langley</u>	<u>MONTANA MINING ASSN.</u>	<u>231</u>	☒	☐
<u>Bob Miller</u>	<u>mt mine</u>	<u>231</u>	☒	☐
<u>Janet Ellis</u>	<u>MT Audubon</u>	<u>231</u>	☐	☒ Amend
<u>tho. Hedges</u>	<u>MEIK</u>	<u>231</u>	☐	☒
<u>J.V. Bennett</u>	<u>Mont PIRG</u>	<u>231</u>	☐	☒
<u>Mauraen Clay-Schwinder</u>	<u>WIFE</u>	<u>231</u>	☒	☐
<u>Lorna Frank</u>	<u>MT. Farm Bureau</u>	<u>231</u>	☒	☐
<u>Jimmy Johnson</u>	<u>CURE</u>	<u>231</u>	☒	☐
<u>Bob Stephens</u>	<u>mt House Builders</u>	<u>231</u>	☒	☐
<u>John Fitzpatrick</u>	<u>Pegasus Gold</u>	<u>231</u>	☒	☐

Ken Hoovestol MSA (Snowmobile) MAT 3 / MHE

Melissa Case

VISITOR REGISTER

B40 CLINCH

Governor's Off

231

☒

ALL HAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NIFTB

231

☒

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 10,
1995, at 12:30 PM.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 137 (following Executive Action on SB
199)
Executive Action: SB 231, SB 147, SB 199, SB 288, SB 137,
SB 145, SB 225, SB 234.

EXECUTIVE ACTION ON SB 231

Motion: SEN. JEFF WELDON MOVED DO PASS ON SB 231.

Motion: SEN. WELDON THEN MOVED TO ADOPT AMENDMENTS NO.
sb023102.ate AS CONTAINED IN EXHIBIT 1.

Discussion: SEN. WELDON explained the amendments to the
committee members.

He said it was not his intention to change the intent of the bill, but thought the language was clearer. He was concerned that the sponsor may not have had a chance to review them yet.

SEN. TVEIT asked SEN. KEN MESAROS if he had a chance to look at the amendments and how they changed the bill.

SEN. MESAROS explained the first time he saw the amendments was just a few minutes ago, and in just going through them, it does expand the intent of the bill dramatically. He said he would oppose the amendments because they would be striking the "regulatory restrictions."

Substitute Motion: SEN. TVEIT MOVED A SUBSTITUTE MOTION THAT THEY REJECT AMENDMENTS NO. sb023102.ate.

CHAIRMAN GROSFIELD asked Todd Everts, Environmental Quality Council, if there was any fiscal impact with the amendments. Mr. Everts, responded that amendment no. 6, may have a fiscal impact.

SEN. BROOKE said she would like to hear a little bit of what and how you look at regulatory restrictions versus impacts.

SEN. WELDON explained that he thought that regulatory restrictions were narrower than impacts. He said there were other things the government could affect besides regulations.

SEN. KEATING asked Sen. Weldon, if he didn't think that it broadens it to the point that it is undefinable?

SEN. WELDON responded that he didn't think so. He indicated it is still definable to government action, but it would not broaden it to all human endeavors.

SEN. BROOKE asked Mr. Everts if he would give his interpretation of the how the amendments would affect the bill.

Todd Everts replied that the bill as introduced adds language to the Montana Environmental Policy Act, clarifying the Legislature's intent for agencies to review their economic and social impact analysis within MEPA.

SEN. BROOKE questioned the amendments because they also include the regulatory restrictions as well other social and economic impacts.

Mr. Everts said it just changes the clarification, but one could argue that regulatory impacts still would be analyzed under current existing law.

SEN. TVEIT said basically the amendments change it into a study bill.

SEN. BROOKE commented that if you are going to create an impact statement you have to study and analyze it, so it isn't just a study by itself. It has to have that language in the law to say what you do with it, or say that is how you get to the end result.

Vote: MOTION TO DO NOT PASS SEN. WELDON'S AMENDMENTS No. sb023102.ate, CARRIED 8-3 ON A ROLL CALL VOTE WITH SENATORS BROOKE, WELDON, AND WILSON VOTING NO.

CHAIRMAN GROSFIELD asked Sen. Mesaros if he had talked to anybody on the Committee about moving his amendments.

Motion: SEN. MACK COLE MOVED TO ADOPT SEN. KEN MESAROS'S AMENDMENTS NO. sb023101.ate AS CONTAINED IN EXHIBIT 2.

SEN. MESAROS explained the amendments to the committee members.

CHAIRMAN GROSFIELD said the current fiscal note says \$180,000 for the Department of Health and Environmental Sciences. He asked SEN. MESAROS what that was for.

SEN. MESAROS he hadn't seen any specific figures, but it was his understanding that the impact on the DHES would be minimal. They suggested some modifications which were included in the amendments.

Todd Everts explained that as Sen. Mesaros stated, a group was convened with all the agencies that have to conduct MEPA analysis along with the Governor's office. Sen. Mesaros went over his bill with them, and with these amendments, which were sent out to all the agencies including the DHES, the feed back has been "that there will be minimal impact." This specifically includes the DHES and their legal council.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb023101.ate, CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TVEIT MOVED TO DO PASS SB 231 AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 147

SEN. COLE explained they had approved amendment no. sb014703.ate, but amendment no. sb014704.ate would replace that amendment

CHAIRMAN GROSFIELD thought what they needed to do was to reconsider their action on amendment number SB014703.ate and asked for a motion to reconsider this action.

Motion: SEN. COLE MOVED TO RECONSIDER THEIR ACTION ON AMENDMENT SB014703.ate

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

2-10-95

[illegible]

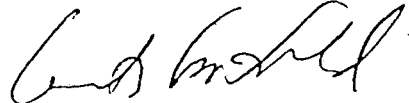
SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995

MR. PRESIDENT:

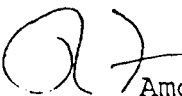
We, your committee on Natural Resources having had under consideration SB 231 (first reading copy -- white), respectfully report that SB 231 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1
Strike: line 10 through line 11.
2. Page 1, line 12.
Following: "that"
Strike: "any"
3. Page 1, lines 13 and 14..
Following: "actions" on line 13
Strike: "be" on line 13 through "practicable." on line 14
Insert: "that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize or eliminate regulatory restrictions are considered. It is not the intent of the legislature to affect in any manner other economic or social considerations or any other analysis conducted under the Montana Environmental Policy Act."
4. Page 3, line 18.
Following: "property"
Insert: ", as provided in (1) (b) (iv) (D) "
5. Page 3, lines 26 and 27.
Following: "including"
Strike: ":" on line 26 through "(I)" on line 27.
6. Page 3, line 28.
Strike: "implemented; and"
Insert: "analyzed. The analysis in this subsection (1) (b) (iv) (D) need not be prepared if the proposed action does not involve the regulation of private property."
7. Page 3, line 29 through line 1 on page 4.
Strike: subsection (II) in its entirety.

-END-


Amd. Coord.
 Sec. of Senate

351555SC.SRF 30

Amendments to Senate Bill No. 231
First Reading CopyRequested by Senator Weldon
For the Committee on Natural ResourcesPrepared by Todd Everts
February 6, 1995

1. Page 1, line 11.

Following: "reduces"

Strike: "regulatory restrictions"

Insert: "impacts"

2. Page 1, line 13.

Following: "government"

Strike: "regulation of"

Insert: "impacts on"

3. Page 1, line 14.

Following: "that"

Strike: "eliminate regulation of"

Insert: "minimize impacts on"

Following: "property"

Insert: ", while protecting the public's right to a clean and healthful environment,"

4. Page 3, line 18.

Following: "for"Strike: "regulatory restrictions"

Insert: "impacts"

5. Page 3, line 26.

Strike: "rights"

6. Page 3, lines 27 and 28.

Strike: "whether" on line 27 through "implemented" on line 28

Insert: "an analysis of how each alternative may affect private property"

SENATE STANDING COMMITTEE REPORT

Mesuros's Amendments

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-10-95

BILL NO. SB-231

Page 1 of 1

February 10, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 231 (first reading copy -- white), respectfully report that SB 231 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1

Strike: line 10 through line 11.

2. Page 1, line 12.

Following: "that"

Strike: "any"

3. Page 1, lines 13 and 14..

Following: "actions" on line 13

Strike: "be" on line 13 through "practicable." on line 14

Insert: "that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize or eliminate regulatory restrictions are considered. It is not the intent of the legislature to affect, in any manner other economic or social considerations or any other analysis conducted under the Montana Environmental Policy Act."

4. Page 3, line 18.

Following: "property"

Insert: ", as provided in (1)(b)(iv)(D)"

5. Page 3, lines 26 and 27.

Following: "including"

Strike: "I" on line 26 through "I" on line 27.

6. Page 3, line 28.

Strike: "implemented; and"

Insert: "analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property."

7. Page 3, line 29 through line 1 on page 4.

Strike: subsection (II) in its entirety.

-END-



Amd. Coord.

Sec. of Senate

56023101.ate
3515558C.SRF

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-231 NUMBER 1

MOTION: To NOT APPROVE

SEN WELDON'S Amendments #sbo.231.02.9te

CARRIED 8-3

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

HOUSE NATURAL RESOURCES

Page 5

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0153	BROOKE, VIVIAN	CONFORM TO SAFE DRINKING WATER ACT; CREATE WELLHEAD PROTECTION PROGRAM					
	2/06	3/03		CONCUR AS AMENDED	3/10	VOTE: 14-3	3/13
SB0186	BECK, TOM	DSL ABANDONED MINE RECLAMATION AUTHORITY					
	2/06	3/10		CONCUR	3/10	VOTE: 17-0	3/13
SB0200	LYNCH, J. D.	REVISE AND CLARIFY CECRA (COMPREHENSIVE ENVIRONMENTAL CLEANUP & RESPON. ACT)					
	2/15	3/06		CONCUR AS AMENDED	3/8	VOTE: 16-2	3/09
SB0203	GROSFIELD, LORENTS	WATER RIGHTS COMPACT -- BIGHORN CANYON AND LITTLE BIGHORN BATTLEFIELD					
	2/01	2/10		CONCUR	3/3	VOTE: 13-5	3/06
SB0204	GROSFIELD, LORENTS	PUBLIC WATER SUPPLY ACT ENFORCEMENT REVISIONS					
	2/06	3/03		CONCUR AS AMENDED	3/6	VOTE: 17-1	3/07
SB0225	TOEWS, DARYL	REQUIRE SALE OF SOME STATE LANDS IN DANIELS/VALLEY/GARFIELD/PHILLIPS COUNTY					
	2/20	3/08		TABLED ON	03/16	VOTE: 13-3	
SB0231	MESAROS, KEN	PRIVATE PROPERTY RIGHT CONSIDERATIONS UNDER MEPA					
	2/15	3/08		CONCUR	3/10	VOTE: 12-5	3/13
SB0252	TVEIT, LARRY	CLARIFY WATER QUALITY LAWS					
	2/27	3/10	Tabled 3/13 - 11-7	CONCUR AS AMENDED	3/15	VOTE: 12-6	3/16
SB0288	KEATING, TOM	REVISE THE MONTANA ENVIRONMENTAL POLICY ACT					
	2/20	3/08		CONCUR	3/10	VOTE: 9=8	3/13
SB0330	SWYSGOOD, CHUCK	WATER QUALITY NONDEGRADATION REVISIONS					
	2/27	3/13	Postponed 3/21	CONCUR AS AMENDED	3/22	VOTE: 12-6	3/23
SB0331	BECK, TOM	GENERALLY REVISE THE MONTANA WATER QUALITY ACT					
	2/27	3/13		CONCUR AS AMENDED	3/21	VOTE: 12-6	3/22
SB0346	FORRESTER, GARY	TEMPORARY WATER TREATMENT STANDARDS - NATURAL CONDITION					
	2/27	3/20		CONCUR AS AMENDED	3/21	VOTE: 18-0	3/22

MINUTES

**MONTANA
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By Rep. Dick Knox, Chairman, on March 8, 1995, at

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 231, SB 288, SB 225
Executive Action: SB 200 Be Concurred In As Amended
SB 147 Be Concurred In As Amended

Tape 1, Side A

HEARING ON SB 231

Opening Statement by Sponsor:

SEN. KEN MESAROS, Senate District 25, Great Falls. Written testimony. EXHIBIT 1

Proponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, said SB 231 does not affect or impact other analyses conducted under the Montana Environmental Policy Act (MEPA). The bill proposes that whenever a MEPA analysis is required, actions that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize or eliminate regulatory restrictions are considered. Mr. Bloomquist urged the committee to support SB 231.

Glenn Marx, Policy Director, Governor's Office. Written testimony. EXHIBIT 2

Maureen Cleary-Schwinden, Women Involved In Farm Economics, supported SB 231.

Lorna Frank, Montana Farm Bureau, supported SB 231.

Riley Johnson, National Federation of Independent Businesses, supported SB 231.

Jim Mockler, Montana Coal Council, supported SB 231.

Peggy Trenk, Western Environmental Trade Association, Montana Chamber of Commerce, supported SB 231.

Eric Williams, Pegasus Gold Mining Company, Montana Mining Association, supported SB 231.

Carl Prinzing, Montana Association of Realtors, Missoula County Association of Realtors, supported SB 231.

Mike Murphy, Montana Water Resources Association, supported SB 231.

Frank Crowley, American Smelting and Refining Company, Rosebud Energy Association, supported SB 231.

Gail Abercrombie, Montana Petroleum Association, supported SB 231.

Opponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, said the tone of the bill is anti-regulation. The bill is oriented to protect

private property rights from undue government regulations. Government regulations don't restrict the enjoyment of property.

Anne Hedges, Montana Environmental Information Center, said the Center opposed the bill's assumption that a lot of the regulations on private property are unnecessary. The private property rights language should be struck from the bill because it isn't clearly defined.

Joe Gutkoski, Madison-Gallatin Alliance. Written testimony.
EXHIBIT 3

Debbie Smith, Sierra Club, opposed SB 231 because the entire premise was based on the notion that regulation of property is inherently bad, therefore it must be scrutinized to make sure that it is not undue or overly restrictive. The purpose of the bill is to intimidate agencies or bury them with so much paperwork that they won't do anything. Regulations have many beneficial effects on private property. Zoning, air quality and water quality permits are some of them. Ms. Smith urged the committee to table SB 231.

Tony Schoonen, Anaconda Sportsman's Association, opposed SB 231.
EXHIBIT 4

J. V. Bennett, Montana Public Interest Research Group, opposed SB 231.

Jim Emerson, Self, opposed SB 231.

Wade Sikorski, Self, opposed SB 231.

Tape 1, Side B

Sam Babich, Skyline Sportsman's Association, opposed SB 231.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY asked SEN. MESAROS to explain where people have been losing their property rights because of MEPA that would make SB 231 necessary. SEN. MESAROS said private property rights in his district and many others have a very high priority. There has been an erosion of private property rights over the years. REP. RANEY asked SEN. MESAROS if he could give an example of someone who has lost private property rights because of MEPA. SEN. MESAROS said he didn't have an example. Private property rights as a whole have been eroded.

REP. ROBERT STORY said there has been some concern that the analyses will only take into consideration the site on which the permit is issued and not take the surrounding landowners into account. REP. STORY asked SEN. MESAROS if that was his

assessment. SEN. MESAROS said MEPA already takes economic and social effects into consideration. SB 231 focuses on regulations.

REP. STORY said there has been concern that there isn't any definition for private property and asked Mr. Bloomquist if he shared that concern. Mr. Bloomquist said he didn't share that concern. MEPA has many undefined terms. Real property interests, personal property interests, and water rights are some of the interests that are addressed in relation to property rights.

Closing by Sponsor:

SEN. MESAROS quoted President Teddy Roosevelt. "In every civilized society property rights must be carefully safeguarded. Ordinarily and in the great majority of cases human rights and property rights are fundamentally in the long run identical." SEN. MESAROS urged the committee to support SB 231.

HEARING ON 288

Opening Statement by Sponsor:

SEN. TOM KEATING, Senate District 5, Billings, said SB 288 would amend the Montana Environmental Policy Act (MEPA), but would not impact the environment. The legislation would help the development of business and industry in the state and still retain all the safeguards for the environment. MEPA states that all actions of government are major actions and thereby require an environmental impact statement (EIS) unless the department deems that it is a minor action, in which case a permit could be issued under an environmental assessment (EA). Presently, if a third party doesn't like that decision, it can file a complaint in district court saying that a permit required by the department is a major action of government and requires an EIS. There doesn't have to be proof of anything. The bill would leave the determination of whether an EIS or an EA is needed entirely to the department. In the past some people have abused the system by filing complaints without having to prove their case and the department has to go to the expense of proving its innocence. SB 288 would put the burden of proof on the person challenging the department's decision.

Proponents' Testimony:

Jim Mockler, Montana Coal Council, said an EA would cost an applicant approximately \$50,000. An EIS would cost an applicant approximately \$250,000. The burden of proof throughout the permitting process is on the applicant to show that he can meet the required specifications to obtain the permit. The bill puts an equal burden of proof on a plaintiff to show that an EA is not

(12)

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

MONTANA STATE SENATE



SENATOR KEN MESAROS
SENATE DISTRICT 25
HOME ADDRESS:
2191 MILLEGAN ROAD
CASCADE, MONTANA 59421

COMMITTEES:
FISH & GAME, CHAIR
STATE ADMINISTRATION,
VICE-CHAIR
LEGISLATIVE ADMINISTRATION,
VICE-CHAIR
EDUCATION & CULTURAL RESOURCES

CAPITOL BUILDING
HELENA, MONTANA 59620-0500
PHONE (406) 444-4800
HOME PHONE (406) 866-3318
EXHIBIT 1
DATE 3-8
SB 231

March 8, 1995

Representative Dick Knox, Chairman
House Natural Resources Committee

Mr. Chairman and Members of the House Natural Resources Committee:

I am Senator Ken Mesaros and I am the chief sponsor of SB 231. As the committee knows, the actions of state agencies in many instances involve the regulation of private property in the State of Montana. The issue of regulatory restrictions by state agencies on the use of private property has been a concern expressed by many property owners throughout the state.

My efforts to establish a process whereby state agencies would analyze the regulatory restrictions which may be placed on private property by state actions has led to SB 231. SB 231 uses an established procedural mechanism, the Montana Environmental Policy Act (MEPA), and directs state agencies to consider alternatives which reduce, minimize or eliminate regulatory restrictions of proposed actions of state agencies which require MEPA analysis and which involve regulatory restrictions on private property.

SB 231 does not affect any analysis presently conducted or authorized under MEPA. SB 231 simply states that when state action triggers the MEPA analysis, and when that state action involves regulatory restrictions on private property, an analysis will be conducted on alternatives to the proposed action which may reduce, minimize or eliminate the regulatory restrictions on private property. This analysis need not be conducted if MEPA is not involved, or if the action does not involve regulatory restriction of private property.

SB 231 does not require that state agencies evaluate all property implications of state government actions. SB 231 focuses on actions that place regulatory restrictions on private property and uses the present MEPA process as the mechanism. SB 231 is intended to ensure that MEPA remain supplementary to other laws and duties while not precluding ongoing programs of state government.

Thank you.

EXHIBIT 2
DATE 3-8-95
SB 231

TESTIMONY ON SENATE BILL 231
HOUSE NATURAL RESOURCES COMMITTEE
GLENN MARX, GOVERNOR RACICOT OFFICE
MARCH 8, 1995

Mr. Chairman, for the record my name is Glenn Marx and I serve as policy director for Governor Marc Racicot.

Senate Bill 231 takes a common sense approach to private property protection by simply making a reasonable and practical addition to the Montana Environmental Policy Act.

The provisions of this bill give clear guidance for agencies to analyze any state action which may have an adverse impact on private property. The bill reflects the MEPA intent of impact disclosure followed by an examination of possible options which could reduce potential adverse impacts.

Private property rights are essential in our democracy and SB 231 presents an effective, common sense approach to respect those rights.

Governor Racicot encourages your approval of this bill.

EXHIBIT 3
DATE 3-8-95
SB 231

HOUSE OF REPRESENTATIVES

H. Natural Res. Comm. COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

Sen. Mesavos.

NAME Joe Gutkoski BUDGET 5-231

ADDRESS 304 N. 18th. Av. DATE 3-8-95

WHOM DO YOU REPRESENT? Pres. Madison Gallatin Alliance

SUPPORT _____ OPPOSE ☒ AMEND _____

COMMENTS: Private property rights are protected in the
St. Constitution and Sen. Mesavos's bill is not needed.
Although this bill has been watered down sufficiently
that it has little impact on govt. agency actions, we
still oppose it because it makes a wrong statement
and president.

No support ^{Priv.} prop ownership & all of the benefits & privileges
of owning private property. These rights & privileges
are already protected sufficiently in our body of laws
now in force in the state. This legislation is not needed
and will only be a burden on agencies managing
the public & private resources

GIVINGS VS. "TAKINGS"

In the last several years, the United States Supreme Court has agreed to hear several cases that raised questions about the boundaries between government regulation and private property rights. Although academic debate continues about the legal significance of those cases, their impact has been felt at federal, state and certainly local levels of government around the country.

"Takings" refers to the legal theory that property owners are entitled to taxpayers' dollars if they're prevented by environmental protection laws from activities such as filling in a wetland, dredge-mining a river bottom or polluting the air. The "takings" flag is also waved when developers want to upgrade zoning from an open space or agricultural designation to residential or other more intense use, which often means loss of wildlife habitat and substantial gain in the property's cash value.

In *Takings Law—A Guide to Government, Property, and the Constitution*, lawyers for the Land and Water Fund of the Rockies, a nonprofit legal foundation based in Boulder, Colo., describe the history of private property law in this country, define a "taking," and suggest that much of the bluster is just that: hot air. That air is blowing up dust to confuse the real intent of takings proponents, which is to remove all land use restrictions and, in the case of publicly owned land, place it in private hands.

To date, they have been remarkably successful in creating dust. Most people, and even attorneys and officials charged by law with doing it, flinch at the idea of the government seizing land. It's not surprising, given our cultural background. As James Howard Kunstler points out in *The Geography of Nowhere*, "America's were the most liberal property laws on earth when they were established. The chief benefits were rapid development of the wilderness,

equal opportunity for those with cash and/or ambition, simplicity of acquisition, and the right to exploitation.... American land law was predicated on the paramount principle that land was first and foremost a commodity for capital gain. Speculation became the primary basis for land distribution—indeed, the commercial transfer of property would become the basis of American land-use planning, which is to say hardly any planning at all."

The backlash to that exploitation is the environmental movement of the past 25 years. And the backlash to that is the "Wise Use Movement," which champions takings.

"Nearly eradicated in the rush to profit," Kunstler observes, "was the concept of stewardship, of land as a public trust: that we who are alive now are responsible for taking proper care of the landscape so future generations can dwell in it in safety and happiness." Stewardship and exploitation are running smack dab into each other in Idaho, thanks to jobs creation and population growth. When that happens, the "takings" cry comes quickly to some developers' or would-be developers' lips.

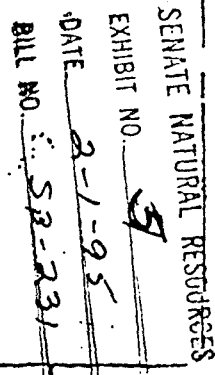
Unfortunately, in discussions of property rights at the local, state and federal levels, "takings" have overshadowed "givings." In many instances, when a single property owner threatens to file a takings lawsuit, several hundred or even thousands of other citizens could step up to the plate and countersue. They're taxpayers, too. Their values and quality of life are threatened by the proposed development. They're being asked to give—their tax dollars, property value and less tangible things like opportunities to hunt and fish. By far the greater number of real takings are from them.

"Givings" also refers to the many times a developer gains value at the expense of environmental quality.

Society, by preserving lake and stream setbacks, wildlife habitat and open space, is adding value to that property and the land around it. Wise, conscientious developers will appreciate that giving and work within the parameters set up to protect it as they go about changing their land. Wise, conscientious homeowners will consider the effects on wildlife of the choices they make about their own land, as noted on page 12.

If this sounds self-serving, it is. The Department of Fish and Game is an arm of government. However, we're into giving, not taking: giving people opportunities to experience the wonder, excitement and adventure associated with fish and wildlife on so many levels.

This editorial is self-serving only because our agency is serving you, the people who buy hunting and fishing licenses, watch all kinds of wildlife and want to settle down near streams, forests and fields healthy and diverse enough to support the fish, birds, mammals, reptiles and insects that compose its living tapestry. Our charge, whether as law enforcers or law abiders, is to consider all the "givings" and "takings" in our lives and be mindful of maintaining the appropriate balance between them.



HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resource

COMMITTEE

BILL NO. SB 231

DATE 3-8-95 SPONSOR(S) Sen. Meseros

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
J.V. Bennett	Mont PIRC		X
GARY LANGLEY	MONTANA MINING ASSN.	✓	
L.F. THOMAS	ANACONDA SPORTSMEN		X
Peggy Trenk	WETA	✓	
Glenn Mark	Gov. Racicot	X	
ERPC WILLIAMS	PELAGUS GOLD	X	
Deborah Smith	Sierra Club		X
Janet Ellis	MT Audubon		X
Jim Mockler	MT Coal Council	X	
Jeff Barber	NPRC		X
MARK SHARLEY	SELF		X
FRANK CROWLEY	ASARCO JEROME ENERGY	✓	
Stan Fraser	SELF		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Wilderness COMMITTEE BILL NO. SB 231
DATE 3-8-95 SPONSOR(S) Senator Messers

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joe Gutkoski Pres.	Madison Gallatin Alliance		✓
James St. Emerald	SYH		✓
MIKE MURPHY	MT. WATER RES. ASSN	X	
Ed Johns GT Falls	Russell County Sportsmans Assoc		X
JOHN OAGGETT GLASSBORO	MYSELF		X
Tony Schaar	State Lands Coz		X
SAM BABICH	SKYLING SPORTSMAN ASS MONTANA ACTION FOR RECESS		X
Dianne Mc ermand	self		X
Lorna Frank	MT. Farm Bureau	X	
Carl Prinzling Missa. 241 W. Main ST MT	MT Assoc of Realtors.	X	
Alan Tollo	Self		X
Jim McDermid	Self		X
GAIL ABERCROMBIE	MT Petroleum Assn	X	
Anne Hedges	MEIC		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

USE Natural Resources

BILL NO.

SB 231

FE 2-895

SPONSOR(S)

COMMITTEE B
Senator Messers

PLEASE PRINT

PLEASE PRINT

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on March 10, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Jon Ellingson (D)
Rep. Scott Orr (R)
Rep. Emily Swanson (D)

Members Absent: Rep. Carley Tuss

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 252, SB 362, SB 186
Executive Action: SB 186 Be Concurred In
SB 153 Be Concurred In As Amended
SB 231 Be Concurred In
SB 288 Be Concurred In

Tape 1, Side A

REP. OHS distributed and explained an amendment to SB 153.
EXHIBIT 6

Motion/Vote: REP. OHS MOVED THE AMENDMENT TO SB 153. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. BILL TASH MOVED SB 153 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 14 to 3. REP. DANIEL FUCHS, REP. DOUG WAGNER and REP. SCOTT ORR voted no.

EXECUTIVE ACTION ON SB 231

Motion/Vote: REP. PAUL SLITER MOVED SB 231 BE CONCURRED IN. Voice vote was taken. Motion carried 12 to 5. REP. HAL HARPER, REP. DAVID EWER, REP. BOB RANEY, REP. EMILY SWANSON and REP. JON ELLINGSON voted no.

EXECUTIVE ACTION ON SB 288

Motion: REP. PAUL SLITER MOVED SB 288 BE CONCURRED IN.

Discussion:

REP. HAL HARPER said SB 288 will aid large corporations and will make it more difficult for a citizen to force an agency to do an EIS.

REP. BOB RANEY said the Department of State Lands testified that citizens had brought eight suits against the department and the citizens had won five of them. SB 288 will make it so difficult the citizens won't be able to get involved.

Vote: Voice vote was taken. Motion carried 9 to 8. REP. BOB RANEY, REP. EMILY SWANSON, REP. JON ELLINGSON, REP. HAL HARPER, REP. DAVID EWER, REP. DANIEL FUCHS, REP. CLIFF TREXLER, and REP. PAUL SLITER voted no.



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 231 (third reading copy -- blue) be concurred in.

Signed: _____

Dick Knox
Dick Knox, Chair

Carried by: Rep. Knox

Committee Vote:

Yes 2, No 5.

3/13 m

58085/SC.Hbk

54

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-10-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson			✓
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr			✓
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson			✓
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss		✓	
Rep. Doug Wagner	✓		

SENATE BILL NO. 231

INTRODUCED BY MESAROS, KNOX, GRINDE, ROSE, BECK, MARSHALL, GREEN, FELAND, SLITER,
FUCHS, STOVALL, DEVANEY, WISEMAN, HARGROVE, REHBEIN, MOHL, BAER, HOLLAND,
MARTINEZ, TOEWS, BOHARSKI, KASTEN, MERCER, MASOLO, HAYNE, MILLS, L. SMITH, AHNER,
HERRON, MILLER, M. HANSON, HERTEL, EMERSON, CRISMORE, BENEDICT, DEVLIN, SWYSGOOD,
HARP, KEATING, GROSFIELD, BARNETT, TAYLOR, BERGMAN, SOMERVILLE, DEBRUYCKER, MCKEE,
WELLS, DENNY, BRAINARD, FORBES, OHS, CLARK, ANDERSON, TASH, KITZENBERG, CURTISS,
T. NELSON, WAGNER, STORY, ELLIS, BROWN, JABS, COLE, TVEIT, HOLDEN, HARDING, JENKINS,
AKLESTAD, ESTRADA, S. SMITH, MURDOCK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA
ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND
IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND
75-1-201, MCA."

STATEMENT OF INTENT

~~It is the intent of the legislature that this legislation serve as a directive to state agencies to
implement government actions in a manner that reduces regulatory restrictions placed on private property.~~
Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any
actions ~~be analyzed to ensure that undue government regulation of private property be evaluated and that
alternatives that eliminate regulation of private property be implemented when practicable.~~ THAT
REGULATE THE USE OF PRIVATE PROPERTY ARE EVALUATED TO ENSURE THAT ALTERNATIVES THAT
REDUCE, MINIMIZE OR ELIMINATE REGULATORY RESTRICTIONS ARE CONSIDERED. IT IS NOT THE
INTENT OF THE LEGISLATURE TO AFFECT IN ANY MANNER OTHER ECONOMIC OR SOCIAL
CONSIDERATIONS OR ANY OTHER ANALYSIS CONDUCTED UNDER THE MONTANA ENVIRONMENTAL
POLICY ACT.

It is not the intent of the legislature to diminish or affect in any manner a property owner's rights
under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of
eminent domain in any manner.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2
3 **Section 1.** Section 75-1-102, MCA, is amended to read:

4 **"75-1-102. Purpose.** The purpose of parts 1 through 3 is to declare a state policy ~~which~~ that will
5 encourage productive and enjoyable harmony between ~~man~~ humans and ~~his~~ their environment, to protect
6 the right to use and enjoy private property free of undue government regulation, to promote efforts ~~which~~
7 that will prevent or eliminate damage to the environment and biosphere and stimulate the health and
8 welfare of ~~man~~ humans, to enrich the understanding of the ecological systems and natural resources
9 important to the state, and to establish an environmental quality council."

10
11 **Section 2.** Section 75-1-103, MCA, is amended to read:

12 **"75-1-103. Policy.** (1) The legislature, recognizing the profound impact of ~~man's~~ human activity
13 on the interrelations of all components of the natural environment, particularly the profound influences of
14 population growth, high-density urbanization, industrial expansion, resource exploitation, and new and
15 expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and
16 maintaining environmental quality to the overall welfare and human development, ~~of man and further~~
17 recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private
18 property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal
19 government, ~~and~~ local governments, and other concerned public and private organizations, to use all
20 practicable means and measures, including financial and technical assistance, in a manner calculated to
21 foster and promote the general welfare, to create and maintain conditions under which ~~man~~ humans and
22 nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of
23 undue government regulation, and to fulfill the social, economic, and other requirements of present and
24 future generations of Montanans.

25 (2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility
26 of the state of Montana to use all practicable means consistent with other essential considerations of state
27 policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ so that the
28 state may:

29 (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding
30 generations;

(b) ~~assure~~ ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property free of undue government regulation;

~~(d)~~(e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment ~~which~~ that supports diversity and variety of individual choice;

~~(e)~~(f) achieve a balance between population and resource use ~~which~~ that will permit high standards of living and a wide sharing of life's amenities; and

~~(f)~~(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person ~~shall be~~ is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ that may have an impact on ~~man's~~ the environment;

(ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, AS

1 PROVIDED IN SUBSECTION (1)(B)(IV)(D);

2 ~~(((iv))~~(iv) include in every recommendation or report on proposals for projects, programs, legislation,
3 and other major actions of state government significantly affecting the quality of the human environment,
4 a detailed statement on:

5 (A) the environmental impact of the proposed action;

6 (B) any adverse environmental effects ~~which~~ that cannot be avoided should the proposal be
7 implemented;

8 (C) alternatives to the proposed action;

9 (D) any regulatory impacts on private property rights, including:

10 ~~(H) whether alternatives that reduce, minimize, or eliminate the regulation of private property rights~~
11 ~~have been implemented; and ANALYZED. THE ANALYSIS IN THIS SUBSECTION (1)(B)(IV)(D) NEED NOT~~
12 ~~BE PREPARED IF THE PROPOSED ACTION DOES NOT INVOLVE THE REGULATION OF PRIVATE~~
13 ~~PROPERTY.~~

14 ~~(II) whether state government may be liable for compensation to a private property owner for~~
15 ~~regulatory takings of private property as required by the 5th and 14th amendments to the U.S. constitution~~
16 ~~or Article II, section 29, of the Montana constitution;~~

17 ~~(D)(E)~~ the relationship between local short-term uses of ~~man's~~ the environment and the
18 maintenance and enhancement of long-term productivity; and

19 ~~(E)(F)~~ any irreversible and irretrievable commitments of resources ~~which~~ that would be involved
20 in the proposed action should it be implemented;

21 ~~(((v))~~(v) study, develop, and describe appropriate alternatives to recommend courses of action in any
22 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

23 ~~(((vi))~~(vi) recognize the national and long-range character of environmental problems and, ~~where~~ when
24 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
25 designed to maximize national cooperation in anticipating and preventing a decline in the quality of
26 ~~man's~~ the world environment;

27 ~~(((vii))~~(vii) make available to counties, municipalities, institutions, and individuals advice and
28 information useful in restoring, maintaining, and enhancing the quality of the environment;

29 ~~(((viii))~~(viii) initiate and ~~utilize~~ use ecological information in the planning and development of
30 resource-oriented projects; and

1 ~~(viii)~~(ix) assist the environmental quality council established by 5-16-101; and

2 (c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~(iv), the responsible
3 state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction
4 by law or special expertise with respect to any environmental impact involved. The responsible state official
5 shall also consult with and obtain comments from any state agency with respect to any regulation of private
6 property involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state,
7 federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~
8 must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must
9 accompany the proposal through the existing agency review processes.

10 (2) The department of public service regulation, in the exercise of its regulatory authority over rates
11 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1
12 through 3.

13 ~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement,~~
14 ~~but no later than December 31, 1980, the issuance of a permit to drill a well for oil or gas is not a major~~
15 ~~action of state government as that term is used in subsection (1)(b)(iii).~~

16 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~
17 ~~1980, that must include but not be limited to:~~

18 ~~(i) such environmental impacts as may be found to be associated with the drilling for and~~
19 ~~production of oil and gas in the major producing basins and ecosystems in Montana;~~

20 ~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be~~
21 ~~necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the~~
22 ~~environment and renewable resources of the ecosystem may be returned to either conditions similar to~~
23 ~~those existing before drilling or production occurs or conditions that reflect a natural progression of~~
24 ~~environmental change;~~

25 ~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such~~
26 ~~environmental impacts of individual drilling proposals as may be found to exist;~~

27 ~~(iv) an appropriate method for incorporating such environmental review as may be found to be~~
28 ~~necessary into the board's rules and drill permitting process and for accomplishing the review in an~~
29 ~~expedient manner;~~

30 ~~(v) the maximum time periods that will be required to complete the drill permitting process;~~

1 including any environmental review; and

2 ~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in~~
3 ~~responding to public and private concerns about drilling and production.~~

4 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~
5 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~
6 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~
7 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~
8 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~
9 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~
10 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~
11 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

12 ~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas~~
13 ~~conservation shall prepare a written progress report after each regular meeting of the board and after any~~
14 ~~special board meeting that addresses the adoption or implementation of the programmatic environmental~~
15 ~~statement. A copy of each report must be sent to the environmental quality council."~~

16
17
18 **NEW SECTION. Section 4. Private property protection -- ongoing programs of state government.**
19 Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S.
20 or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing
21 programs of state government pending the completion of any statements that may be required by [sections
22 1 through 3].

23 -END-